



DEPARTMENT OF THE NAVY  
NAVAL AIR SYSTEMS COMMAND  
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS  
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IN REPLY REFER TO

NAVAIRINST 4365.3  
AIR-2.5.1  
25 Nov 96

NAVAIR INSTRUCTION 4365.3

From: Commander, Naval Air Systems Command

Subj: PROCESSING AND REPORTING OF CLAIMS AND REQUESTS FOR  
EQUITABLE ADJUSTMENT

Encl: (1) Definitions  
(2) Roles and Responsibilities of IPT Members for Claims  
(3) Claims Resolution Process and Procedures  
(4) Claims Appeal Process  
(5) Sample Documents

1. Purpose. The purpose of this instruction is to establish policy, assign responsibilities, and provide procedures within the Naval Aviation Systems Team (TEAM) for processing, disposing of and reporting claims, and Requests for Equitable Adjustment (REAs) in accordance with the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Navy Acquisition Procedures Supplement (NAPS).
2. Cancellation. This instruction supersedes and replaces Naval Air Systems Command Instruction (NAVAIRINST) 4365.2 of 24 August 1992. Changes to this NAVAIRINST are not indicated because this instruction is a major revision.
3. Scope. This instruction applies to all claims and REAs which are submitted to the TEAM (i.e., Naval Air Systems Command (NAVAIR), its Naval Air Warfare Centers (NAWCs), its field activities, and the Naval Aviation Program Executive Officers (PEOs)). This instruction does not apply to claims which involve fraud. In accordance with FAR 33.210, the contracting officer does not have authority to resolve claims where there is evidence of fraud or an on-going fraud investigation involving allegations in the claim.
4. Policy
  - a. Claims and REAs Against the Navy. FAR 33.204 and NAPS 5233.204-90 stress the importance of sound business relationships between the Navy and its contractors. The processing of contractor claims and disputed REAs is an area which can seriously affect such business relations. The TEAM's policy is to minimize the occurrence of claims and disputed REAs through realistic planning and contracting, careful attention to the action required to meet the Navy's obligations, and tight control over the changes process. Claims which arise despite

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appropriate precautions must be resolved promptly. All dealings with contractors must be fair and open with the expectation of equitable treatment in all matters. The prompt resolution of claims is enhanced by the use of dedicated Integrated Process Teams (IPTs), which effectively combine programmatic, contracting, legal, technical, and other resources in a team approach to claim resolution.

b. REAs Treated As Claims. It is TEAM policy to treat all REAs as claims in accordance with the Federal Circuit Court's July 1995 decision in Reflectone, Inc. v. Dalton which held that a REA no longer requires a preexisting dispute to be cognizable as a claim. Instead, a claim must only be a written demand seeking, as a matter of right, a sum certain. Undisputed, routine requests for payment are not considered claims. Hereinafter throughout this instruction, the use of either term "claim" or "REA" shall refer interchangeably to all claims or REAs.

c. Claims Against the Contractor. There may be situations where a debt is owed by a contractor to the government. NAPS 5232.690(c) requires that the government employ the same standards of documentation for claims against the contractor as are required of a contractor for claims against the government. In addition, NAPS 5232.690(d) requires that the same review processes be applied to claims against a contractor as are required for claims against the government.

5. Procedures. Enclosures (1) through (4), respectively, address definition of terms, roles and responsibilities of TEAM members, steps in the formal process for resolving claims, and the appeal process for claims which are not settled. Certified claims and claims against contractors should follow the process described in enclosure (3). For claims which do not require certification, it may be appropriate to use an informal procedure in order to expedite resolution. Enclosure (5) provides samples of some of the most widely used documents associated with claims.

## 6. Reports

a. Tracking. All claims shall be tracked in the NAVAIR automated Procurement Initiation Document Management Information System (PIDMIS) or site equivalent.

b. Initial Report. For claims received at TEAM Headquarters, the contracting officer shall forward the claim to the Center of Excellence for Claims in AIR-2.5.1 via the cognizant contracts department head unless the contracts department head decides to retain cognizance of the claim. Once the claim is received, the Initial Report of Contractor Claim will be prepared (see enclosure (5), exhibit A, for sample form). For claims received at the NAWCs and remote sites, the Initial Report of Contractor Claim will be prepared and submitted to AIR-2.5.1. For claims against the contractor, this report is not required.

c. Claims Report. AIR-2.5.1 shall prepare a claims report which is periodically submitted to the Commander, Naval Air Systems Command, AIR-00.

d. Additional reports. Additional reports that may be required will be prepared by the Contracts Policy and Process Management Department, AIR-2.1, and/or AIR-2.5.1. Each contracting officer assigned to a claim IPT will be contacted for input to these reports.

7. Miscellaneous Requirements

a. Marking "FOR OFFICIAL USE ONLY." Significant reports and documents generated as a result of this instruction and any folders, records, and files containing such reports or documents will be marked "FOR OFFICIAL USE ONLY" per paragraph 6 of SECNAV Instruction 5720.42E and NAPS 5233.9000(f) unless a more restrictive legend is appropriate.

b. Marking "Attorney Client Privilege" or "Attorney Work Product." Many documents developed during the settlement process are privileged and must be marked accordingly. The IPT counsel should instruct the IPT on the use of these markings; however, each member of the IPT must ensure that the markings are properly used and that the marked documents are controlled accordingly.

c. Records. The documents associated with a claim must be maintained in separate files and must be readily accessible until the claim is disposed of (modification signed or court order issued). The claim file should contain duplicates of originals if original documents are required for contract files or other areas. Each IPT member must have access to the entire claim file. The IPT is encouraged to use scanning or other shared data techniques to ensure real time access to all of the documents associated with the claim.

8. The Center of Excellence for Claims in AIR-2.5.1. This Center is a service provided to the TEAM. Its purpose is to provide assistance in claims resolution as well as training for claims in the IPT settlement and litigation process. The Center of Excellence can provide samples and forms; investigation, negotiation, and litigation support; and general information on claims and lessons learned.

J. A. LOCKARD

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## DEFINITIONS

1. Claim. Federal Acquisition Regulation (FAR) 33.201 defines a claim as: a written demand, seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A written demand seeking payment exceeding \$100,000 must be certified to be a claim. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in FAR 33.206(a), if it is disputed either as to liability or amount, or is not acted upon in a reasonable time. As stated in FAR 33.205, a request for relief under Public Law 85-804 as implemented in FAR 50 is not a claim.
2. REA. A request for equitable adjustment (REA) is a letter or proposal from a contractor requesting a change to the contract price, schedule, specifications, or other terms and conditions, to compensate the contractor for injuries resulting from government fault. Under Reflectone, Inc. v. Dalton, 60 F. 3d 1572 (Fed. Cir. 1995), there is no longer any distinction between an REA and a claim. Termination proposals are not considered REAs for purposes of this instruction.
3. Certification. A claim or REA is properly certified if it has been prepared following the criteria established by DFARS 233.7000. If the claim is considered in dispute at the time of filing, then the certificate required by FAR 33.207 will satisfy the certification requirement of DFARS 233.7000. Under the applicable FAR and DFARS provisions, a claim or REA exceeding \$100,000 or a claim at any value which uses an Alternative Dispute Resolution (ADR) process under 5 U.S.C. §575-580 or in accordance with the ADR Act must contain a certification that: (1) the claim is made in good faith; (2) supporting data are accurate and complete to the best of the contractor's knowledge and belief; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable. The certification must be signed by a senior company official or an officer or general partner of the contractor.
4. Contract Disputes Act (CDA). The CDA of 1978 (41 U.S.C. §601-613) established procedures and requirements for asserting and resolving claims. The Act provides for payment of interest on contractor claims, requires certification of contractor claims in excess of \$100,000, and provides for a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact (must be referred to the Navy Inspector General). The CDA and FAR 33.210 authorize contracting officers, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract, other than fraud or claims for penalties or forfeitures which have been delegated by statute or regulation to another Federal agency for administration determination and/or settlement.
5. Fiscal Memorandum. A fiscal memorandum is a document prepared by the Office of Counsel member of the IPT based upon information furnished by the IPT. This memorandum provides a preliminary assessment of the types and years of funds required if settlement is achieved.

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Because the funding issue should be addressed early during the claims resolution process, the fiscal memorandum is prepared prior to the Claims Analysis Report (CAR) and Legal Entitlement Memorandum (LEM).

6. Claim Analysis Report (CAR). The CAR is a document prepared by the IPT members involved with the facts of a claim. The CAR discusses the facts and analyzes the issues raised in the claim or REA. The issues may be technical, contractual, accounting, or programmatic. All team members will work together to build the government position regarding all aspects of the claim.

7. Legal Entitlement Memorandum (LEM). The LEM is a document prepared by the Office of Counsel member of the IPT, based upon information furnished by the IPT, which addresses the legal strengths and weaknesses of a claim or REA. It includes a legal analysis of the claim relying principally upon the CAR, any applicable audit reports and all additional findings of the IPT. It provides a discussion of the claimant's allegations based on the facts and provides a preliminary assessment of litigative risk if the claim is not settled.

8. Contracting Officer's Final Decision (COFD). The COFD is a letter to the contractor which states the government's final position on a claim. The final decision must make a determination as to the merits and amount of the claim or REA taking into consideration the requirements and subject areas listed in FAR 33.211. See enclosure 3, paragraph 13 for time frame for COFD issuance, required substance, and approval thresholds.

9. Demand Letter. In accordance with FAR 32.610, a demand letter is a written demand made by the Procuring Contracting Officer (PCO) for payment based on a claim by the Navy against a contractor. It must address all requirements listed in FAR 32.610(b) and (c). Moreover, in accordance with NAPS 5232.690(e), it must also address all the requirements for a COFD. In accordance with DFARS 232.610, a copy of the demand letter must be sent to the applicable paying office.

10. Rule 408 Agreement. Rule 408 refers to a Federal Rule of Evidence which prevents any written and oral communication between parties regarding settlement to be used as evidence in litigation with certain limited exceptions. The purpose of the rule is to promote settlements and avoid litigation where possible. A 408 Agreement is a written agreement between the Navy and the contractor confirming that nothing said or exchanged during fact-finding sessions and negotiation of claims and REAs can be admitted as evidence of liability or quantum in any subsequent appeal to a court or the Armed Services Board of Contract Appeal (ASBCA). However, evidence revealed during negotiations which is otherwise properly discoverable is not protected by Rule 408.

11. Alternative Disputes Resolution (ADR). In accordance with FAR 33.201, ADR means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted

settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

12. Deemed Denial. An appeal on a deemed denial basis by a contractor to the ASBCA or Court of Federal Claims may be proper if the contracting officer fails to issue a decision within the required time periods of FAR 33.211. FAR 33.211 (g) allows the contractor to initiate an appeal to the Court of Federal Claims or to the ASBCA prior to the contracting officer issuing a COFD on the grounds that the contractor is entitled to recover and the Navy has failed to address its claim in a timely manner. Timeliness of the appeal is determined on a case by case basis pursuant to the time limitations set out in FAR 33.211 (c), (d), (e), and (f). The court or the board may construe the lack of a COFD as a denial of the entire claim by Navy and find jurisdiction on that basis for determining the merits of the contractor's claim.

13. Rule 4 File. ASBCA Rule 4 requires that within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board and to the appellant contractor an appeal file consisting of all documents pertinent to the appeal. These documents include: the decision; the complete contract; all relevant correspondence; transcripts of any testimony, affidavits, or witness statements; and any additional information considered relevant to the appeal. Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. For more information, see the "Rules of the ASBCA" as detailed in the Litigation Coordination Process Action Team (PAT) Handbook issued by the NAVAIR IPT / Navy Litigation Office PAT.

14. Quantum. Quantum is the amount of money sought by the contractor or government as part of a claim or REA. It must be specified as a dollar amount and supported by evidence that the alleged harm caused the amount specified to be incurred. Under FAR 31, there are limitations on the type of costs which can be included in a quantum.

15. Interest. In accordance with FAR 33.208, the government shall pay simple interest on any amount found due and unpaid from the date that: (1) the contracting officer receives a properly certified claim; or (2) the payment otherwise would be due, if that date is later, until the date of payment. On claims with defective (see FAR 33.201) certifications, FAR 33.208 requires interest to be payable retroactively to the date that the contracting officer initially received the claim or 29 October 1992, whichever is later. The interest rate for claims and REAs is the same as the rate used for Facilities Capital Cost of Money. For claims against a contractor, in accordance with FAR 32.614-1, simple interest accrues 30 days after the demand letter is issued. The interest rate is provided in Public Law 92-41. Contact the Center of Excellence for Claims or AIR 2.1 for the applicable rates.

Enclosure (1)

## ROLES AND RESPONSIBILITIES OF IPT MEMBERS FOR CLAIMS

The prompt resolution of claims is enhanced by the use of a dedicated IPT which effectively combines resources (as described below) in a team approach to claim resolution.

1. **IPT Leader.** The IPT leader (as designated by the PM) performs the following duties:
  - acts as a guiding force for the claim,
  - tracks milestone completion,
  - informs the program manager (PM) and appropriate comptroller of all funding issues shortly after claim submission or during claim analysis,
  - briefs the PEO, when appropriate, on the assessment of a claim before negotiations begin, ADR begins, or a COFD is issued,
  - designates the technical experts.
2. **Contracting Officer.** The contracting officer performs the following duties:
  - issues all correspondence to the contractor,
  - is the sole interface between the contractor and the IPT, debriefs the IPT on the requirements of NAVAIRINST 4365.3,
  - issues the COFD or demand letter,
  - participates in the fiscal memorandum/CAR/LEM preparation,
  - may participate in the PEO briefing, if appropriate,
  - negotiates all claim settlements,
  - may procure claim support supplies and services,
  - reports and tracks the claim from inception through contract modification, claim withdrawal, or court decision,
  - inputs data into the PIDMIS,
  - may procure litigation support requested by the litigation team,
  - advises the litigation team of settlement progress during litigation.
3. **PM.** The PM is responsible for funding any claim settlement, and:
  - forms the claim IPT,
  - is responsible for the timely disposition of the claim,
  - obtains personnel from each competency as appropriate for the IPT,
  - funds all requirements of the claims IPT during the claims settlement process,
  - may fund requirements during the claims litigation process if not funded by the Navy Litigation Office,
  - funds claim settlements.
4. **Technical Experts.** The IPT shall include technical experts who can analyze the facts and issues of the claim. The technical experts may come from within the TEAM or a supporting activity (Defense Contract Management Command (DCMC), price fighters, former field activity, etc.). Technical experts are responsible for performing the following tasks:

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- reviewing the claim,
- heading preparation of the CAR,
- participating in gathering, reviewing and analyzing data,
- providing data for LEM preparation,
- participating in the PEO briefing,
- may participate in negotiations or ADR,
- participating as part of the litigation team.

5. Counsel. Each claim shall have command counsel assigned to perform the following tasks:

- determine if the claim is properly certified as required by FAR 33.207 and DFARS 233.7000,
- provide an initial review of the legal theories of the claim,
- provide a fiscal memorandum early in the process to determine appropriate fiscal year and type

of funding,

- assist in preparation of the CAR,
- review the facts and the data of the case,
- suggest types of data to be gathered, review the quality of the data once it is gathered, and

provide it to the contracting officer,

- prepare the LEM,
- review the COFD or demand letter and other correspondence,
- participate in negotiations and ADR as necessary,
- interface with the trial attorney.

6. Auditor. The auditor is responsible for verifying the contractor's actual costs and providing recommendations on the allowability, allocability, and reasonableness of all proposed costs. The auditor is responsible for the following duties:

- tailoring the audit to meet the needs of the IPT,
- providing all working papers and back up information for the audit to the IPT,
- participating in IPT decisions,
- supporting negotiations or ADR as necessary.

7. Litigation Team. In accordance with NAPS 5233.9002(a)-(k), the Office of the General Counsel (OGC) has authority over all appeals to the ASBCA and, as such, shall be the head of the Litigation Team. The Litigation Team shall also obtain assistance from the claim IPT, and other individuals required to support the litigation. For claims over \$400,000, generally the Litigation Office of OGC handles the claim in litigation at the ASBCA unless the claim is delegated to NAVAIR for handling. For claims under \$400,000, generally TEAM attorneys will handle the claim in litigation at the ASBCA. When functioning as part of the Litigation Team, the claim IPT is responsible for the following:

- supporting the litigation throughout the appeal process,
- briefing the trial attorney on the case,
- developing and answering interrogatories and other discovery requests,

- assisting with case development and preparation.

The IPT is entitled to briefings from the litigation team on the litigation strategy and schedule. The IPT must adhere to all litigation deadlines set by the trial attorney, the ASBCA, or court. Failure to meet deadlines may result in sanctions against NAVAIR or a poor legal defense.

8. Trial Attorney. The trial attorney is the attorney who will represent the Navy in the litigation of the claim. If the claim is before the ASBCA and has a value over \$400,000, generally, the attorney shall come from the Navy Litigation Office. If the amount is under \$400,000, generally, the attorney shall come from Command Counsel. If the claim is before a court, the Department of Justice will represent the Navy, with assistance from the IPT. The trial attorney is responsible for coordinating with the PM and the IPT.

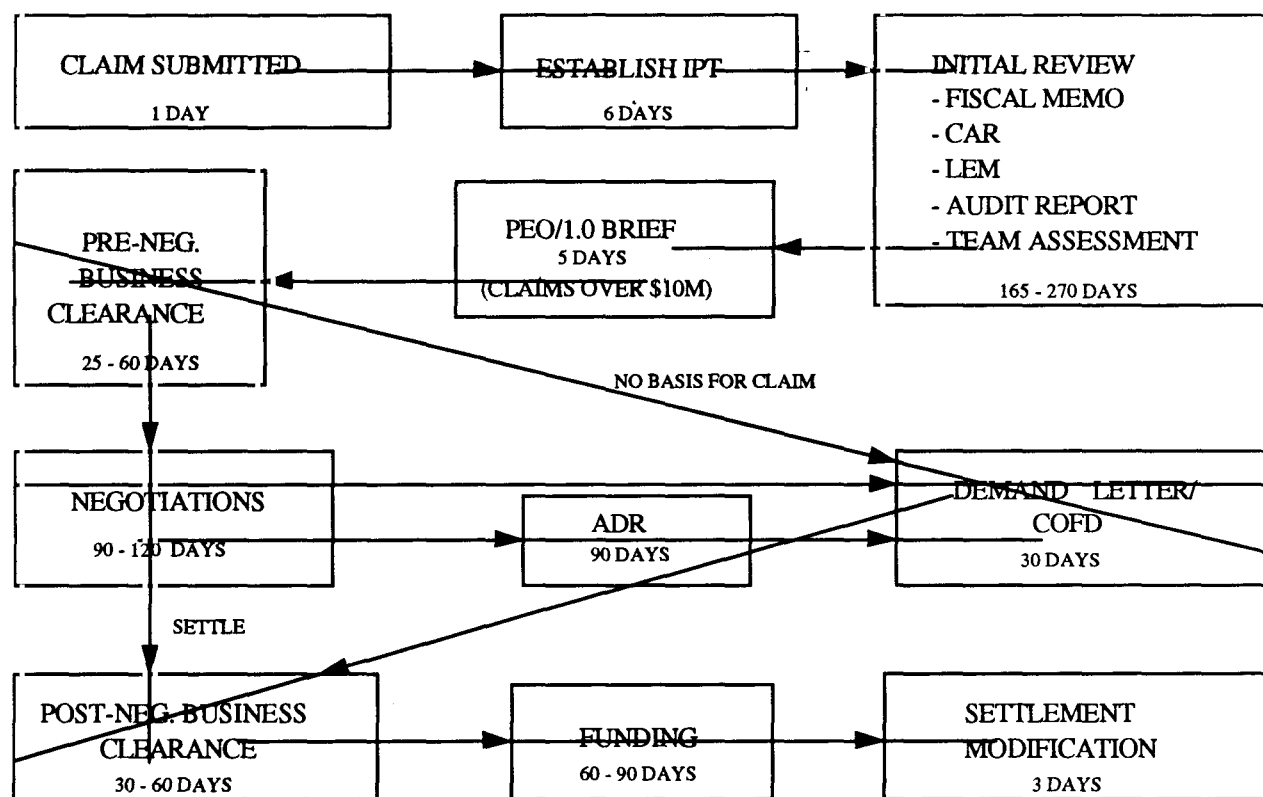
9. Other Responsibilities. Other responsibilities which the IPT members must perform include:

- gathering, organizing, copying or scanning data so that it is available to all team members as soon as possible,
- preparing and processing procurement actions for supplies and services required to support the claim,
- preparing and supporting all documentation to support the claim process,
- tracking the team's progress,
- attending IPT meetings,
- preparing the team's brief to the PEO,
- keeping competency leaders informed of the claim's progress.



## CLAIMS RESOLUTION PROCESS AND PROCEDURES

Figure (1) is a diagram of the process for claims analysis which includes all significant events and average recommended days for accomplishing tasks.



TOTALS: 232 - 372 DAYS FOR COFD, 385 - 615 DAYS FOR NEG. SETTLEMENT

Figure 1

The following is an explanation of the tasks required for each part of the process.

1. Claim Submittal. FAR 33.206 requires contractors to submit claims to the contracting officer. Misdirected claims should be hand carried to the contracting officer in order to ensure that they are properly handled.

2. Establish IPT. In order to implement NAPS 5233.204-90(a), upon receipt of a claim or being informed of a potential claim against a contractor, the PM, or equivalent person who has authority to commit resources to the claim, shall promptly form an IPT or assign the claim to a specific subset of an existing IPT. The IPT should consist of the following members: the contracting officer, PM or representative, contract specialist, technical expert(s), attorney, support personnel, as necessary, from the field (e.g., Defense Contract Audit Agency (DCAA), administrative contracting officer, etc.) and additional personnel, as necessary. Composition of the team is determined by the person establishing the team. Support contractors may assist the IPT with data collection and analysis.

3. Initial Review. The IPT shall determine whether the claim is complete. Each certified claim must include the following: a Contract Pricing Proposal Cover Sheet (SF 1411), a specific quantum, a basis for the claim, and supporting data indicating the circumstances of each allegation and facts connecting the harm with the quantum. **The contracting officer must notify the contractor within 60 days of receipt of the claim if the claim is not complete or not properly certified** (see enclosure (5), exhibit B, for a sample contracting officer deficiency notification letter). Once the IPT has determined that the claim is complete and properly certified, review of the merits of the claim begins. The IPT attorney conducts an initial review of the legal theories of the claim as well as an analysis (which is detailed in a fiscal memorandum) to determine appropriate fiscal year and type of funding. For government claims against the contractor, no certification is required. The IPT should proceed to investigate the merits of the government's claims by gathering data to create a CAR, LEM, and cost proposal. During the initial review, all documents should be made available to all team members. One copy of all documents reviewed by the IPT should be organized and maintained until the claim is dispositioned (contract modification or court decision issued).

a. Establish Schedule and Notify Contractor. Pursuant to FAR 33.211(c)(2), the contracting officer must notify the contractor, if it is estimated that a decision on the contractor's claim against the government will not be issued within 60 days (see enclosure (5), exhibit C, for a sample notification letter). No notification is required for claims against a contractor. However, in either case, the IPT must establish milestones for resolution of the claim and monitor the team's progress toward resolution.

b. Fact-finding. It may be appropriate to conduct fact-finding with the contractor in order to clarify the contractor's claim or to gather facts for a claim against the contractor. Resolving vague or unsupported allegations by the contractor or government early in the process will facilitate a swift resolution. However, prior to any discussion of a claim with the contractor, the contracting officer should consider using a Rule 408 Agreement (see enclosure (5), exhibit D, for a sample Rule 408 Agreement).

c. Documentation. The following documents should be used to organize and analyze the facts and theories of the claim:

(1) Fiscal Memorandum. A separate fiscal (funding) memorandum shall be prepared by the IPT attorney which shall provide a legal opinion of the type and year of money which must be used for settlement. This memorandum shall be prepared prior to the CAR and LEM. To assist in the preparation of the fiscal memorandum, contract funding documentation shall be furnished to the IPT attorney by the contracting officer, as supplemented by other IPT members.

(2) CAR. The CAR provides the statement of facts and analysis of facts which are the foundation of the government's position on the claim. The LEM relies on the CAR and the decision whether to negotiate or litigate the claim will be based on the facts in the CAR. The IPT members who prepare the CAR should include a statement of the facts of the case and an analysis of the facts. The analysis should include quantifiable data, avoid generalizations, and be written in simple language. The CAR should also include a discussion of any potential counterclaims indicated by the data or otherwise known to the IPT. Enclosure (5), exhibit E, is provided for guidance on CAR format and content. Because the CAR addresses issues which are framed under the direction of the IPT attorney and because it is prepared in accordance with the advice and counsel of the IPT attorney, the CAR should be marked "attorney client privilege, attorney work product." A CAR should be prepared for a claim against the contractor in the same detail as a CAR for a claim submitted by a contractor. For a claim against the contractor, the CAR will serve as an outline of events to be included in the government's proposal. During preparation of the CAR, the authors should keep in mind that the documents and work papers associated with it may be releasable during litigation. In addition, all work papers used as backup to the CAR must be maintained in the IPT file until the claim is settled because they may also be required to support litigation.

(3) LEM. While the LEM cannot be completed until the CAR is completed, it should be initiated and developed concurrently with the CAR. The LEM should include:

- a summary of the facts presented in the claim,
- any other relevant facts which were not included in the claim or defenses thereto,
- all legal theories presented in the claim,
- the extent to which the claimant demonstrated entitlement by allegation,
- all potential defenses,
- an explanation of the elements of each legal theory or defense and application of the facts to each legal theory or defense,
- an overall litigative risk assessment,

Additional LEM requirements are explained in NAPS 5233.9001(d)(2). The LEM should be marked "Attorney Work Product".

A LEM is also required for all claims against contractors. The general legal theories used in the LEM should be summarized and may be included in any proposal to bring suit against a contractor (see paragraph 4. below). The findings and conclusions of the LEM should not be included in the government proposal.

(4) **Audit Report.** In accordance with FAR 15.804, audits are required on all claims over \$500,000 unless waived by the contracting officer. Generally, an audit of the claim should be obtained because litigative risks are substantially increased without it. However, the contracting officer must decide whether an audit is necessary for each claim. If an audit is required, the DCAA auditor and any other field analyst should become full IPT members. Prior to beginning the audit, the team preparing the audit must have a full understanding of the claim, the technical issues, the legal issues and the purpose of the audit. The audit should be tailored to meet the needs of the IPT. Extraneous opinions should be avoided because the audit may be releasable and discoverable during litigation. A poor audit may be as detrimental to the claims process as a poor CAR. While the audit must be prepared simultaneously with the CAR and LEM to be useful to the IPT, there must be constant communication among IPT members to ensure that the audit includes all important facts. If an audit is ordered upon the advice of the IPT attorney in order to assess government liability on the claim, the audit report should be marked "attorney client privileged."

While no audit report is required for claims against the contractor, the proposal must include a cost breakdown and analysis. The IPT may benefit from an auditor providing input into this section of the proposal in the same way as DCAA would audit a proposal.

(5) **Proposal.** For all claims against contractors, the IPT shall prepare a proposal detailing the government's claim. In accordance with NAPS 5232.690(c), the proposal should be in the same level of detail which is required under FAR 15.8 for contractor proposals to the government. At a minimum, it should include a discussion of each allegation, each legal theory, the facts supporting each theory, and a cost analysis of the quantum associated with the harm.

(6) **Team Assessment.** Once the CAR, LEM, audit report, or the proposal (if government claim) are completed, the IPT shall review the documents and discuss with the contracting officer whether to proceed with negotiation, pursue ADR or issue a COFD. The contracting officer shall make the ultimate decision. The results of the recommendation shall be formalized in a written memorandum called a Team Assessment which is signed by all IPT members (see enclosure (5), exhibit F, for a sample assessment). This document should be marked "Attorney Client Privilege, Attorney Work Product."

4. **PEO Brief.** For all claims over \$10 million, the IPT shall brief the PEO or AIR 1.0 (or appropriate funding source for claimed amount) by memorandum, video teleconference, or briefing on its recommendations regarding the claim. The briefing will advise the PEO or AIR 1.0 of the IPT's findings and whether the IPT will pursue negotiations, ADR or issue a COFD. The brief should include a review of the facts, a summary of legal theories, a discussion of legal entitlement, and if negotiation is pursued, the year and type of money, if any, which would be used for settlement.

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## 5. Pre-negotiation Business Clearance.

a. The contracting officer shall prepare the pre-negotiation business clearance. In addition to the NAPS and NAVAIR requirements for pre-negotiation business clearances, the clearance must include the following:

(1) "Attorney Client Privilege" marking and the following paragraph at the end of the compliance section.

The Navy position, regarding the various claims and potential claims that are the subject of this clearance and any final contract modification, is based in part or in whole upon legal entitlement opinions provided by the Office of Counsel. Therefore, this document has been marked as "Attorney-Client Privilege" since it contains legal conclusions that were made in communications which are fully protected by that privilege. This document is entitled to such protection because the client's interests at issue are those of the United States Navy. All personnel in possession of this document are, therefore, required to control dissemination of this document in such a manner as to maintain the protections afforded by the "Attorney-Client Privilege."

(2) Discussion of each allegation and reference to the LEM analysis of each allegation.

(3) Litigative risk analysis.

(4) Type and year of funds which would be used for settlement.

b. The following items are not required for settlement of a claim and should be noted in the pre-negotiation business clearance as "N/A":

(1) Justification and Approval for Sole Source Procurement

(2) Synopsis

(3) Equal Employment Opportunity Compliance

(4) Subcontracting Plan

(5) Make or Buy Plan

c. Approval of the pre-negotiation clearance shall be at the same level as required for approval of all other clearances as required by Contracts Group Instruction 4200.30C.

6. Negotiations. The claim should be negotiated as soon as practicable. Claims should be resolved by mutual agreement to the maximum extent possible. The IPT should fully participate in negotiations and, if appropriate, the PM (or equivalent) and authority responsible for funding the

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settlement (PEO or AIR 1.0) should be advised of progress during negotiations. For claims against the contractor, the proposal and all required supplemental data should be provided to the contractor well in advance of beginning negotiations so that the contractor is able to discuss the merits and quantum of the government's claim.

7. Negotiation Failure. If negotiations do not result in a settlement, the contracting officer should consider ADR before issuing a COFD.

8. ADR. If ADR is selected, the IPT must determine the form of ADR and receive concurrence from the contractor. ADR may consist of any method agreed to by both parties such as mediation, a mini-trial, or arbitration. The government cannot agree to be bound by any ADR result. However, the contracting office is strongly encouraged to accept the ADR result. The cost of ADR proceedings should be split evenly between the contractor and the government. Contact the Center of Excellence for Claims to discuss the various ADR methods. The Center of Excellence can also assist with ADR agreements and contracting for ADR services.

9. Post-Negotiation Business Clearance. The post-negotiation clearance shall include an "Attorney Client Privilege" marking. The PCO shall prepare the post-negotiation business clearance promptly after negotiations have been completed and include a full discussion of the derivation of the settlement amount and all terms and conditions associated with the settlement. The post-negotiation clearance shall be approved at the same level as other clearances.

10. Settlement Approval. If the claim exceeds \$50 million, the settlement must be approved by the Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) for Acquisition and Business Management (OASN(RDA) ABM). The contracting officer shall submit one copy of the pre-negotiation business clearance, CAR, and LEM along with the post-negotiation business clearance for OASN(RDA) ABM review. No settlement commitment, settlement agreement, or agreement in principle can be signed prior to obtaining this required approval.

11. Funding. Department of Defense (DOD) guidance on expired or lapsed funding generally provides for charging of within-scope claims settlements to available and appropriate expired appropriations only where proper justification can be made under governing fiscal laws. Out-of-scope claim settlements or within scope settlements where the appropriate funds are canceled generally require available current year appropriations.

When processing a claim, the contracting officer/contract specialist should discuss the action with the cognizant PM, comptroller, and AIR-7.7 to determine the proper funding. Funding issues should be analyzed shortly after the claim is received. The IPT attorney shall prepare a fiscal memorandum which shall set forth a recommended funding type and year determination. The PM should be informed of the progress of negotiations to ensure that funds are available in a timely manner.

For settlements using non-current year funding, the contracting officer and PM shall notify the comptroller in writing of the amount and type of funds required. Unobligated balances for upward obligational adjustments are only available for within scope cost growth or increases in costs rising from claims that have antecedent liabilities attributable to the original obligation. PMs are required to obtain a legal opinion prior to submitting proposed obligational adjustments exceeding \$100,000. A statement from the contracting officer attesting to the fact that the change is within scope is required. Obligational adjustments greater than \$1 million must be submitted for OASN(Financial Management & Comptroller (FM&C)) approval. Adjustments greater than \$4 million require DOD Comptroller approval, and adjustments greater than \$25 million require Congressional notification. Any use of currently available funds to remedy a deficiency in a canceled or expired account requires OASN(FM&C) approval.

If funding is required for settlement of a certified claim in an interest bearing situation, NAPS 5233.206(a)(8) requires a message be sent to OASN(RDA) ABM to inform them of the same. A follow up message is required every 30 days until funding is provided.

12. Issue Contract Modification. The contracting officer shall issue a contract modification covering any claim settlement. However, if the claim value was over \$50 million, the modification cannot be executed until the settlement has been approved by OASN(RDA) ABM.

13. COFD/Demand Letter

a. Purpose. If there is no negotiated or ADR settlement, the contracting officer will prepare a COFD letter or a demand letter stating the final position of the government and that no agreement with the contractor was reached. When a COFD or demand letter is anticipated, the IPT must begin assembling the Rule 4 file in order to meet the ASBCA required deadlines (see enclosure (4)) if the contractor appeals the COFD or demand letter.

b. Time Frame. In accordance with FAR 33.211(c)(1), for claims under \$100,000, the COFD must be issued within a 60-day time frame if the contractor so requests, or within a reasonable time frame if it does not. For claims over \$100,000, the COFD must be issued within a 60-day statutory deadline unless the contractor has been notified within 60 days per FAR 33.211(c)(2) of the time within which a decision will be issued.

c. Substance. Per FAR 33.211(c)(1), the COFD or demand letter will include: (a) a description of the claim or dispute; (b) a reference to the pertinent contract terms; (c) a statement of the factual areas of agreement and disagreement; (d) statement of the contracting officer's decision with supporting rationale; and (e) paragraph (v) of FAR 33.211(a)(4) concerning appeal procedures. The contracting officer will furnish a copy of the COFD or demand letter to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. In addition to the above requirements for COFDs, in accordance with NAPS 5232.690, a demand letter must include a complete proposal in the same level of detail expected from the contractor detailing the allegations and quantum of the government's claim. Enclosure (5), exhibits G and H, respectively,

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provide a sample COFD letter and a sample demand letter. The COFD or demand letter must be distributed to all addresses as listed for contract modifications and the Navy Litigation Office.

d. Review and Approval. Prior to being issued by the contracting officer, all COFDs and demand letters must be reviewed and approved as follows. COFDs and demand letters for claims with a face value (without interest or exchange rate amounts) of under \$10 million must be reviewed by an AIR 7.7 staff attorney and approved by the contracting officer's department head. For claims with a face value of \$10 million but under \$50 million, all COFDs and demand letters must be reviewed by AIR 7.7 and approved by AIR 2.0. All COFDs and demand letters for claims with a face value over \$50 million must be approved by OASN(RDA) ABM prior to being issued.

14. Deemed Denial. In the event of undue delay by the contracting officer in rendering a decision on the claim, the contractor may request the ASBCA or Court of Federal Claims to deem the contracting officer's inaction as a denial of the claim in its entirety. If the ASBCA or Court of Federal Claims accepts the contractor's assertions, then litigation begins without a COFD.

## CLAIMS APPEAL PROCESS

1. Time Frame. The COFD or demand letter may be appealed to the Armed Services Board of Contract Appeals (ASBCA) within 90 days from receipt of the contracting officer's decision. Alternatively, the contractor may appeal directly to the Court of Federal Claims within 12 months of the date of receipt of the final decision. If the contracting officer is unreasonably late in issuing a COFD, the contractor may bring its appeal directly to the Board or Court as a deemed denial.
2. Rule 3. When a notice of appeal is received, the Board is required to docket it promptly and furnish written notice to the Appellant and the contracting officer, together with a copy of the ASBCA rules. DFARS 5233.9002 specifies that, in the event that a notice of appeal is received by the contracting activity but has not been filed in the ASBCA, the contracting officer is required to forward it to the ASBCA. This will be done through the IPT attorney on behalf of the contracting officer, with a copy to the Navy Litigation Office. However, in typical circumstances, the contractor will have filed its Notice of Appeal with the ASBCA and the ASBCA clerk will have sent a copy to the Navy Litigation Office who in turn will notify AIR-7.7.
3. Rule 4. The IPT compiles the documents required by Rule 4 of the ASBCA Rules. The Rule 4 must be arranged in chronological order, numbered, and tabbed, and include all of the documents relied upon by the contracting officer in reaching a final decision, as well as all documents that may be pertinent to the case but are not privileged. The Rule 4 must include documents from all sources including DCAA, DPRO, contractors or technical files. The contracting officer should document his/her efforts to retrieve and identify documents because the contracting officer may be called as a witness to testify to the Rule 4 creation and completeness. Once assembled, the IPT attorney should review the Rule 4 file to determine if any of the documents included in the Rule 4 are privileged and consequently not releasable. For example, CARs should not be included in a Rule 4 file. Next, the trial attorney should review and approve the Rule 4. The trial attorney's review of the Rule 4 file for releasability should be done before assembly is completed. Once the Rule 4 file is approved, the IPT shall make at least five copies of the Rule 4. Four copies should be sent to the trial attorney for filing with the ASBCA. One copy should be retained by the IPT. The Rule 4 must be filed with the ASBCA and served on the appellant contractor within 30 days after receipt of the notice of appeal; therefore, assembly of the Rule 4 file should begin with the approval of the COFD or demand letter. Under unusual circumstances, the ASBCA may grant an extension of the 30-day period for filing Rule 4 documents. Contact the Center of Excellence for Claims for a copy of "Litigation Before the Armed Services Board of Contract Appeals." This handbook explains the Rule 4 process and interaction with the Navy Litigation Office for appeals under their cognizance.

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4. Litigation Briefing. The IPT should be prepared to brief the trial attorney on the facts and circumstances of the case quickly. It should include: potential witness information, privileged documents, CAR, LEM, and the IPT assessment of the claim.
5. Complaint. The party filing the appeal must file a complaint within 30 days of the notice of appeal. The complaint will be forwarded to the IPT.
6. Answer. Once the complaint has been filed, the government must answer the complaint within 30 days. The IPT shall participate in preparing the answer.
7. Case Strategy and Status. The trial attorney shall meet monthly with the IPT to discuss the litigation strategy, schedule, and status. At these meetings, the roles and responsibilities of each individual will be addressed. The IPT shall monitor progress and report back to the PM as required.
8. Discovery. Discovery consists of requests for documents, interrogatories, depositions, and fact and expert witness preparation. Discovery shall be conducted in accordance with the litigation strategy and according to the planning in the monthly litigation meetings with the trial attorney and IPT.
9. Reports. The contracting officer must continue to track the action as a claim on all reports and in the PIDMIS or site equivalent until it is resolved (a contract modification, court determination of no government liability, or the claim is withdrawn with prejudice).
10. Funding. If the Navy Litigation Office is conducting the litigation, they will fund all litigation support costs. This funding includes the cost of ADR if it is performed concurrently with the appeal. If the litigation is conducted by any other trial attorney, the PM, PEO, or AIR-1.0 will provide funding for litigation support.
11. ADR. During all phases of the review and negotiation of each claim, the IPT shall examine the feasibility of employing ADR methods. The assessment should be made a second time with the trial attorney if the claim is appealed. All dispute resolution methods such as mediation, arbitration, and minitrials should be evaluated when determining the method for claim settlement. If ADR is selected, the cost of ADR preparation and proceedings can be shared between the government and the contractor. The contracting officer procuring ADR services is encouraged to split the cost with the contractor.
12. Negotiations. During litigation, negotiations may still be conducted with the contractor to reach a settlement (especially if new information is discovered). Before entering into negotiations, the IPT must coordinate with the trial attorney. The contracting officer is responsible for all negotiations and all resulting settlements.

13. Court Documents, Motions, and Briefs. The IPT shall receive copies of all court documents, motions, and briefs. Where appropriate, the IPT shall assist with preparation of the documents, motions, and briefs, and review them for factual accuracy.
14. Trial/Hearing. The trial attorney shall represent the Navy before the ASBCA. IPT members may be required to attend the trial or hearing as witnesses or assistants to the trial attorney.
15. Decision. If the parties do not settle the dispute prior to the conclusion of trial, the court will resolve it by means of entering a judgment. The trial attorney shall report the judge's decision to the IPT and PM. Generally, any court judgment against the Navy is paid out of the General Accounting Office judgment fund, which must be reimbursed by the command. The PM shall be responsible for securing repayment of the judgment fund.

Enclosure (4)

## SAMPLE DOCUMENTS

<u>TITLE</u>	<u>EXHIBIT</u>
Initial Report of Contractor Claim	A
Certification Deficiency Notification Letter	B
Contracting Officer Notification Letter	C
Rule 408 Agreement	D
Claims Analysis Report (CAR) Outline	E
Team Assessment	F
Contracting Officer's Final Decision (COFD) Letter	G
Demand Letter	H



# SAMPLE - INITIAL REPORT OF CONTRACTOR CLAIM

NAVAIRINST 4365.3

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a. Action Type: Claim REA (Circle One)

b. Claim/REA No: \_\_\_\_\_

e. Program: \_\_\_\_\_

c. Negotiator Code: \_\_\_\_\_ Tel: \_\_\_\_\_

f. Date of CL/REA: \_\_\_\_\_

d. PCO: \_\_\_\_\_ Tel: \_\_\_\_\_

g. Date Received: \_\_\_\_\_

1. Contractor's Name:

2. Contract Number:

a. Supplies or Services Procured:

b. Total Contract Price, Target Price or Estimated Cost:

3. Amount of Claim/REA:

4. Basis of Claim/REA:

5. Participating Requiring Activities (e.g. SUPSHIP, DCMAO, USAF, etc.)

6. Initial Assessment of Validity of Claim/REA (where possible):

7. Provisional Contract Price Increase or Payment:

8. Planned Disposition of Claim/REA:

	Baseline	Target	Accomplished
Contract Specialist Assigned	_____	_____	_____
IPT Settlement Team Established	_____	_____	_____
Fiscal Memorandum Received	_____	_____	_____
CAR Received	_____	_____	_____
Audit Report Received	_____	_____	_____
LEM Received	_____	_____	_____
Pre-Neg Clearance Approved	_____	_____	_____
Negotiation Completed	_____	_____	_____
Post-Neg Clearance Approved	_____	_____	_____
Document/Unilateral/Demand Ltr Mailed	_____	_____	_____
Mod Executed	_____	_____	_____

Status/Comments: (Discuss settlement rationale upon closure)

9. DCAA Report Number:

Dated: / /

Audited: \$  
Questioned: \$  
Sustained: \$

Pending Litigation:  
Reportable:  
Closed:  
Criminal Investigation:  
Duplicate:

Yes

No

10. Milestone Dates:

Team Analysis / /  
CAR Requested / /  
LEM Requested / /

Funds Requested / /  
Funds Received / /

11. Settlement Amount: \$

Type: FY \$(K)  
Type: FY \$(K)  
Type: FY \$(K)

Enclosure (5), Exhibit A

**SAMPLE  
CERTIFICATION DEFICIENCY NOTIFICATION LETTER**

4200  
Ser  
Date

(Contractor's Name and Address)

Enclosed is your document no. \_\_\_\_\_ which is being returned to you. Your document was reviewed in order to determine if it was a properly certified claim or Request for Equitable Adjustment (REA) and found to be deficient.

In accordance with the Federal Acquisition Regulations (FAR) 33.207 and the Navy Acquisition Procedures Supplement (NAPS) 5233.206, your claim must be certified if it exceeds \$100,000 or if Alternative Disputes Resolution is used to resolve the claim. Your document met these thresholds.

However, in order to be properly certified in accordance with FAR 33.207 and NAPS 5233.206, a (claim/REA) must: (1) be made in good faith; (2) include supporting data that are accurate and complete to the best of your knowledge and belief; and (3) request the sum which you believe accurately reflects the government's liability. The certification must be signed by a senior company official or a general partner of your firm. In addition, NAPS 5233.206 requires all (claims/REAs) to be supported by specifically identified evidence (including applicable historical and planned costs and production data from your books and records). Conclusions or judgmental assertions not supported by such evidence or by a sound and reasonable rationale are without probative value and are, therefore, unacceptable. In addition, NAPS 5233.206(a)(4) requires that a Standard Form - 1411 accompany your document if it is a (claim/REA) .

Your document does not include the following requirements and is, therefore, not a properly certified claim/REA. We have attempted to the best of our ability to identify all of the serious deficiencies that we observed within your document. Please note that in the event that you correct the deficiencies listed below and resubmit your document, additional discrepancies may be identified.

(list defects)

If you have any questions regarding the above matter, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Contracting Officer

Enclosure (5)  
Exhibit B

**SAMPLE  
CONTRACTING OFFICER NOTIFICATION LETTER**

4200

Ser

Date

(Contractor's Name and Address)  
via: (ACO Name and Address)

Pursuant to FAR 33.211(c)(2), the contracting officer shall issue a decision within the statutory time limitation of 60 days after receiving a certified claim or notify the contractor, within that period, of the time within which a decision will be issued.

After preliminary review of claim no. \_\_\_\_\_ dated \_\_\_\_\_, it is the Contracting Officer's decision that a "Final Decision" cannot be issued within the 60-day period. The Decision will be issued after the technical review, DCMC/DCAA review, legal review, Integrated Program Team assessment, pre-negotiation business clearance approval, negotiations, and post negotiation business clearance approval. A final decision is expected by \_\_\_\_\_. Delays in receiving data or failure to provide data on your part will extend the date for a final decision.

Questions regarding this matter should be directed to \_\_\_\_\_ at telephone number \_\_\_\_\_.

Sincerely,

Contracting Officer



**SAMPLE  
RULE 408 AGREEMENT**

The parties agree that evidence of furnishing, offering, or promising to furnish, or accepting or offering to accept consideration in settlement or compromise of the \_\_\_\_\_ claim is not admissible for any purpose whatsoever. The parties further agree that the conduct, statements, or written information originated by the parties during settlement discussions relating to the claim are within the purview of Rule 408 of the Federal Rules of Evidence, and therefore, will not be admissible as evidence at any subsequent legal proceeding arising from or related to the claim. This agreement does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement or compromise negotiations. This agreement is effective from \_\_\_\_\_ through \_\_\_\_\_.

\_\_\_\_\_  
CONTRACTING OFFICER  
NAVAL AIR SYSTEMS COMMAND

\_\_\_\_\_  
AUTHORIZED OFFICIAL FOR THE  
CONTRACTOR

**SAMPLE  
CLAIM ANALYSIS REPORT (CAR) OUTLINE**

Attorney Client Privilege  
Attorney Work Product

1. **GENERAL DESCRIPTION OF CLAIM:** The contractor submitted claim no. \_\_\_\_ on \_\_\_\_\_ with a total value of \$ \_\_\_\_\_. The claim consists of (number of) allegations against the government. These allegations are based on a theory/ies of liability (list legal cause of action, i.e., late government furnished equipment, defective specifications, etc.). This technical assessment compiles the facts which are relevant to each allegation and addresses each element of the contractor's alleged cause of action using the facts. In addition, the assessment includes the following counterclaims against the contractor and the facts which support the counterclaims.

2. **SPECIFIC DISCUSSION OF EACH ALLEGATION WHICH INCLUDES THE FOLLOWING INFORMATION:**

- a. State the allegation.
- b. State the information which the contractor uses to support the allegation.
- c. State the elements which the contractor must prove to support the cause of action.
- d. State the relevant facts pertaining to the allegation in chronological order.
- e. Identify and document any additional facts known to the government which affect the liabilities asserted by the contractor.
- f. Maintain or attach the documents which support or undermine the statement of the government's facts.
- g. Summarize your finding as to whether the facts, as gathered by the government, indicate whether the contractor has satisfied each element of the cause of action.
- h. Provide an analysis of whether the contractor is entitled to recover the types and amounts of damages claimed.

3. **DISCUSS EACH SPECIFIC COUNTERCLAIM AGAINST THE CONTRACTOR BY SUPPLYING THE FOLLOWING INFORMATION:**

- a. State the government's cause of action and the elements which the government must prove to support the cause of action.

Enclosure (5)  
Exhibit E

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- b. State the relevant facts pertaining to each element in chronological order.
  - c. Maintain or attach the documents which support the statement of the government's facts.
  - d. Summarize your finding as to whether the facts as gathered by the government indicate whether the government has a cause of action.
4. ATTACH A LIST OF POTENTIAL WITNESSES, EXPERTS, AND CONSULTANTS WITH THEIR NAMES, ADDRESSES, AND TELEPHONE NUMBERS.

**SAMPLE  
TEAM ASSESSMENT**

Attorney Client Privilege  
Attorney Work Product

1. **GENERAL DESCRIPTION OF CLAIM:** The contractor submitted claim no. \_\_\_\_ with a total value of \$ \_\_\_\_\_. The claim consists of (number of) allegations against the government. These allegations are based on a theory/ies of liability (list legal cause of action i.e., late government furnished equipment, bad specs etc.). The Claim Assessment Report (CAR) no. \_\_\_\_ dated \_\_\_\_\_ compiled the facts which are relevant to each allegation and addressed each element of the contractor's alleged cause of action using the facts. In addition, the CAR includes counter claims against the contractor and the facts which support the counter claims. The Legal Entitlement Memorandum dated \_\_\_\_\_ found entitlement/no entitlement or (high, medium, low) litigative risk (for each allegation) based on the facts submitted in the CAR and the following additional facts.
2. **SUMMARY OF INTEGRATED PROCESS TEAM (IPT) FINDINGS:** Discuss in general each allegation and whether the IPT determined it had any merit and why.
3. **MAJORITY CONCLUSION:** Based on the above analysis, the IPT concluded that the contractor's/government's claim had (no, some, substantial merit). Therefore, the IPT will pursue (negotiations, Alternative Disputes Resolution (ADR), Contracting Officer Final Decision (COFD), or demand letter).
4. **MINORITY CONCLUSIONS:** Based on the following facts, a minority of IPT members concluded that the contractor's/government's claim had (no, some, substantial merit). Therefore, the minority would recommend pursuing (negotiations, ADR, COFD, or demand letter).
5. **EACH MEMBER OF THE IPT SHOULD SIGN DOCUMENT.**

**SAMPLE  
CONTRACTING OFFICER'S FINAL DECISION (COFD) LETTER**

4200  
Ser  
Date

(Contractor's Name and Address)

The (company name) submitted claim no. \_\_\_\_\_ dated \_\_\_\_\_ for (describe claim and amount).  
It alleged the following:

(Describe the facts as they appear in the claim. Synopsize the events but include all allegations, true and false, which the contractor used to support the claim.)

The (company name) claimed entitlement under (state entitlement). (This is usually the Contracts Disputes Act of 1978 as included in Section I of the contract, clause number FAR 52.233-1. If other entitlement is claimed, include it here.)

The Contracting Officer (agrees or disagrees) with the above facts. (If you disagree with the facts, restate all of the facts which support your view of the claim.)

The Contracting Officer (agrees or disagrees) that the applicable facts as stated in the claim support the contractor's entitlement. (If you disagree, discuss which elements of the contractor's legal theory were not met.)

The contractor has (correctly or incorrectly) computed quantum. (If you admit liability but disagree on the amount, discuss all areas of the claimed quantum that were not supported or you disagree with.)

For the reasons outlined above, it is the Contracting Officer's final decision that the claim submitted by (company name) dated (date) is (entitled to an equitable adjustment, denied, or partially denied). The contracting officer finds the amount of the equitable adjustment to be \$ \_\_\_\_\_.  
(Include this sentence for entitlement or partial denial.)

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you received this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less, or its

Enclosure (5)  
Exhibit G

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accelerated procedure for claims of \$100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contracts Disputes Act of 1978, 41 U.S.C. §603, regarding Maritime Contracts) within 12 months of the date you receive this decision."

Sincerely,

Contracting Officer

cc: Administrative Contracting Officer  
Program Office  
AIR-7.7  
Litigation Office  
Defense Finance Accounting Service

**SAMPLE  
DEMAND LETTER**

4200  
Ser  
Date

(Contractor's Name and Address)

via: (ACO Name and Address)

This letter is the Contracting Officer's final decision regarding the proposal dated \_\_\_\_\_ which requested an equitable adjustment to contract \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ based on the following facts and the enclosed government proposal.

(Discuss all facts in chronological order. Make sure that the facts clearly support the theory of entitlement.)

As a result of the above facts, it is the Contracting Officer's final determination that the government was harmed by (describe all the harm, monetary, and non-monetary. Also include how all monetary damages were calculated. Then make sure that the damages are tied directly to the actions of the contractor).

These damages are recoverable under (list and describe the applicable clause providing relief (i.e., the GFP clause, the disputes clause).

For the reasons outlined above, it is the Contracting Officer's final decision that the government claim submitted to (company name) by proposal dated (date) under contract no. \_\_\_\_\_ is valid.

The Contracting Officer finds the amount of the equitable adjustment to be \$ \_\_\_\_\_ excluding interest. Interest will accrue on the amount if payment is not made within 30 days of receiving this final decision.

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you received this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less, or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the

Enclosure (5)  
Exhibit H

NAVAIRINST 4365.3  
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agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contracts Disputes Act of 1978, 41 U.S.C. §603, regarding Maritime Contracts) within 12 months of the date you receive this decision.”

Sincerely,

Contracting Officer

cc: Program Office  
AIR-7.7  
Litigation Office  
Defense Finance Accounting Service

Enclosure (5)  
Exhibit H